

Office of  
The City Attorney  
City of San Diego  
MEMORANDUM  
236-6220

DATE: May 2, 1994

TO: File

FROM: Meagan J. Beale, Deputy City Attorney

SUBJECT: Interpretation of City Council Policy 600-24  
(Conflicts of Interest)

Attached is a copy of correspondence addressed to Timothy J. Graves regarding the Interpretation of City Council Policy 600-24 (Conflicts of Interest), pertaining to Clairemont-Mesa Planning Committee.

MJB:mrh:920.10  
Attachment  
MS-94-1

TOP

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April 29, 1994

Timothy J. Graves  
Corresponding Secretary  
Clairemont-Mesa Planning Committee  
P.O. Box 17204  
San Diego, California 92177

Dear Mr. Graves:

Interpretation of City Council Policy 600-24  
(Conflicts of Interest)

You requested an opinion on two different potential conflicts of interest facing members of the Board of Directors of the Clairemont-Mesa Planning Committee. First, I must point out that the Clairemont-Mesa Planning Committee (the "Committee"), like all of the community planning committees throughout San Diego, is not an official agency or body of the City of San Diego. The Committee is a group of private citizens who have organized themselves as a voluntary advisory board to review

projects in the Clairemont-Mesa area and provide the thoughts and recommendations of citizens who live and work in the neighborhood.

The City of San Diego does recognize all of the community planning committees under Council Policy 600-24, but this does not confer official status on the committees. Under San Diego City Charter section 43, official advisory boards and committees are created by ordinance, and the members are appointed by the Mayor with confirmation by the City Council. Community planning committees, on the other hand, are composed of resident and business members of the community, and the Board of Directors are elected by the members of the community. Community planning groups were not created by ordinance of the City Council. Thus, community planning groups do not meet the criteria of official boards or committees of the City.

Charter section 40 authorizes the City Attorney to render legal advice to the official agencies of the City of San Diego. Because the Clairemont-Mesa Planning Committee is not an official agency of the City of San Diego, the City Attorney is not authorized to provide legal advice to the Committee. The City Council has limited the involvement of our office to review of bylaw amendments, and to providing a legal defense and indemnification if Council Policy 600-24 board members are sued for their legitimate activities as board members. No such suit has ever been filed to date.

That said, as a matter of courtesy, and because our office was involved in drafting Council Policy 600-24, we are willing to share our thoughts with you as you analyze the issues posed in your letter. The issues are clearly policy issues, rather than legal issues, since there are no legal sanctions for violations of Council policies. Both of your questions revolve around a recycling center proposed by the City of San Diego on property owned by San Diego Gas & Electric ("SDG&E"). You outlined the facts as follows:

Situation No. 1:

One member of the committee is a businessman who currently has a consulting contract with SDG&E that is totally unrelated to the proposed recycling site and that activity. You ask if this represents a conflict of interest and if so, must the member merely disclose his interest or is he required to abstain from participating in the Committee's deliberations on the recycling proposal?

Situation No. 2:

Another board member has become personally involved in the recycling proposal beyond the context of the Committee's review

of the proposal. This member has no economic interest in the recycling proposal, but is strenuously opposed to the proposal and he has personally developed and disseminated information about the proposal to local residents.

You have asked for general guidance under Council Policy 600-24, which states that:

Any member of a community planning group with a direct economic interest in any project that comes before the group must disclose to the community planning group that economic interest, and must refrain from voting or participating in any manner as a member of the planning group.  
(Emphasis added.)

The Clairemont-Mesa Planning Committee is the sort of community planning group described in Council Policy 600-24.

You also posed general questions:

- o Is either situation described above amplified or affected if the board member is an officer of the board or of a standing subcommittee?
- o What is the duty of the Committee in the event either or both of these situations constitutes a conflict of interest? Has the Committee fulfilled its obligations by noting the conflict, or is it obliged to take some action with regard to a conflict?

You advise that the Committee has already acknowledged the potential conflicts and you have requested the board members to keep the Committee fully informed of their activities and to publicly disclose when they are acting as individuals rather than as board members.

Situation No. 1:

The question here is whether the board member has a direct economic interest in the recycling project. The project may be placed on SDG&E property. The board member has a consulting contract with SDG&E which is totally unrelated to the proposed recycling site and activity. Based on those facts, a common sense response would be that the board member has no direct economic interest in the recycling project, because his consulting contract is totally unrelated.

Situation No. 2:

In the second situation, you have identified a strong personal interest but no economic or financial interest. The

Council Policy refers only to a "direct economic interest," precluding only those people who stand to gain or lose financially or economically from participating in decisions about proposed projects.

In response to your general questions, neither situation is affected or amplified if the board member is an officer of the board or of a standing committee. Any member with a direct economic interest in a particular project should not vote on or participate in a discussion of that project in any manner whether as a member of the Committee or as an officer of the board of directors. Your second question appears moot in light of the facts you outlined.

Good luck on your continuing efforts to avoid direct economic conflicts of interest as you provide the City with your best advice from your diverse community viewpoints.

Sincerely yours,  
JOHN W. WITT, City Attorney  
By  
Meagan J. Beale  
Deputy City Attorney

MJB:mrh:920.10